IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

SPECIAL CIVIL APPLICATION No 9332 & 12319 both of 2002

For Approval and Signature:

Hon'ble MR.JUSTICE H.K.RATHOD

==========

1. Whether Reporters of Local Papers may be allowed to see the judgements? : NO

2. To be referred to the Reporter or not? : NO

3. Whether Their Lordships wish to see the fair copy of the judgement? : NO

4. Whether this case involves a substantial question of law as to the interpretation of the Constitution of India, 1950 of any Order made thereunder? : NO

5. Whether it is to be circulated to the concerned Magistrate/Magistrates,Judge/Judges,Tribunal/Tribunals? : NO

GUJARAT INSECTICIDES LTD.

Versus

JILU MAKWANA

Appearance:

Mr. Mayank Buch for SINGHI & CO for Company.

MR MS MANSURI for Respondent Workman.

CORAM : MR.JUSTICE H.K.RATHOD

Date of decision: 01/05/2003

ORAL JUDGEMENT

Heard learned advocate Mr. M.B. Buch for the Company and Mr. M.S. Mansuri, learned advocate for the workman. Rule. Service of rule is waived by Mr. M.S.

Mansuri, learned advocate appearing for the respondent workman in special civil application no. 9332 of 2002 and by Mr. Buch, learned advocate appearing for the respondent company in special civil application no. 12319 of 2002. In the peculiar facts and circumstances of the case and with the consent of the learned advocates for the parties, these two petitions have been taken up for final hearing today itself.

In these petitions, order passed by the Industrial Tribunal, Baroda in Complaint (IT) No. 77 of 1997 in Reference (IT) No. 87 of 1993 and Reference (IT) No. 131 of 1997 dated 30th August, 2002 wherein the tribunal has rejected the application Exh. 2 filed by the workman and has allowed the application Exh. 12 filed by the workman and has set aside the order passed by the company wherein the suspension allowance of the workman has been ordered to be reduced and the company has been ordered to pay to the workman the suspension allowance as per the Model Standing Orders and thereafter, has ordered for further hearing of the original complaint on 12th September, 2002.

I have considered the submissions made by the learned advocates for the parties. It was submitted by the learned advocate Mr. Buch that in view of the conduct of the workman, the inquiry has been delayed and the employer is having power under the Model Standing Orders to reduce the suspension allowance and, therefore, the employer company was justified in reducing the suspension allowance. The submission made by Mr. Buch has, however, been disputed by the learned advocate Mr. Mansuri on behalf of the workman on the ground that because of the interim stay granted by the tribunal, the inquiry has been delayed and and, therefore, such delay cannot be attributed to the workman in completion of the inquiry and, therefore, the employer is not justified in reducing the suspension allowance as per the Model Standing Orders. Both the learned advocates have relied upon the decision of the Hon'ble Apex Court in case of B.D. Shetty and others v. M/s. Ceat Ltd. and others reported in AIR 2001 SC 2953. I have considered the said decision which has been cited both the learned advocates before this Court.

Apart from legality, validity and propriety of the order in question, during the course of submissions, there was some suggestions from both the learned advocates and also suggestion from the court and after considering the suggestions from both the learned advocates as well as the court, ultimately, it has been

agreed between the parties to the effect that the workman shall have to extend positive cooperation for completion of the departmental inquiry within some reasonable period and during the pendency of such departmental inquiry, the workman is entitled, at this juncture, for 50 per cent suspension allowance from the date of suspension till the completion of the departmental inquiry LESS the amount already paid by the employer company to the workman. It is also agreed between the parties that the remaining amount of 25 per cent suspension allowance for entire period from the date of suspension till the date of completion of the departmental inquiry, the petitioner will deposit the said amount before the industrial tribunal and the workman is entitled for such 25 per cent that may be deposited by the company, after the completion of the departmental inquiry irrespective of the result of the departmental inquiry. It is the suggestion from both the learned advocates that the departmental inquiry will be completed within the period of three months. Therefore, considering these suggestions and the consensus arrived at between the learned advocates for the parties, I am of the view if the following order is passed by this court, it would met ends of justice between the parties.

Therefore, it is directed to the petitioner company to pay 50 per cent suspension allowance to the respondent workman with effect from the date of suspension 5th August, 1997 till the completion of the departmental inquiry regularly while deducting the amount which has already been paid to the workman by the petitioner company in respect of the suspension allowance and the difference of the suspension allowance for this period will be paid by the petitioner company to the respondent workman within two weeks from today. It is directed to both the parties namely petitioner company as well as the respondent workman to positively cooperate in the departmental inquiry without raising unnecessary contentions before the inquiry officer and to complete the inquiry proceedings within the period of three months from the date of payment in respect of the difference of the amount of suspension allowance by the petitioner company. It is also directed to the petitioner company to deposit 25 per cent suspension allowance with effect from 5th November, 1997 till 31st March, 2003 within two weeks from today before industrial tribunal concerned and thereafter, the petitioner company shall have to deposit 25 per cent suspension allowance before the industrial tribunal regularly every month before the tribunal till the completion of the inquiry.

It is, however, clarified that as and when the departmental inquiry is completed, and both the parties make joint request before the tribunal to the effect that now the departmental inquiry has been over, upon receipt of such an application from both the parties, the tribunal shall have to make the payment of the 25 per cent suspension allowance deposited by the company to the workman irrespective of the result of the departmental inquiry without any delay. Learned Advocate Mr. Mayank Buch has, however, clarified that the witnesses who have been examined by the company but have not been cross examined by the workman, they will be called again for enabling the workman to cross examine such witnesses.

The order of the tribunal which is under challenge in these two petitions shall stand modified in the aforesaid terms. Rule is made absolute accordingly with no order as to costs.

Dt.1.5.2003. (H.K. Rathod,J.)
Vyas